Remarks/Arguments

Summary of Office Action

In the Office Action, the Examiner rejects claims 13-14 under 35 U.S.C. §112, first paragraph for failing to comply with the enablement requirement. Particularly, the Examiner states that the phrase "receiving unit forms a camera tube" is not supported in the specification.

Further, claim 14 is rejected under 35 U.S.C. §112, second paragraph for being indefinite. Particularly, the Examiner states that it is unclear whether the phrase "difference between image data emitted, and reversed detected light, and the image data without detected light" refers to a difference between two or three items.

Claims 10-11, 13 and 15 stand rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over U.S. Patent 6,188,319 to Frucht in view of U.S. Patent 5,831,724 to Cordes. Claim 14 stands rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Frucht and Cordes, and further in view of U.S. Patent 6,137,569 to Sasaki. Finally, claim 12 stands rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Frucht and Cordes, and further in view of U.S. Patent 4,681,433 to Aeschlimann.

Summary of the Applicants' Response

Claims 10-16 are currently pending. Claims 10, 12, 13 and 14 have been amended for clarity. Claim 15 has been cancelled. Claim 16 is new. Support for the amendments can be found throughout the specification and no new matter has been added. Amendments to the

claims are being made solely to expedite prosecution and do not constitute an acquiescence to any of the Examiner's rejections.

35 U.S.C. § 112 Rejections

Claims 13-14 are rejected under 35 U.S.C. §112, first paragraph for failing to comply with the enablement requirement. Particularly, the Examiner states that the phrase "receiving unit forms a camera tube" is not supported in the specification.

Applicant would like to thank the Examiner for discussing the rejection to claims 13 and 14. During the telephone interview with Examiner Isam Alsomiri on July 24, 2008, it was agreed that the rejection should be withdrawn. Accordingly, Applicant respectfully request that the rejection to claims 13 and 14 be withdrawn.

Claim 14 is rejected under 35 U.S.C. §112, second paragraph for allegedly being indefinite. Particularly, the Examiner states that it is unclear whether the phrase "difference between image data emitted, and reversed detected light, and the image data without detected light" refers to a difference between two or three items.

Applicant submits that claim 14, as amended, satisfies the requirements of 35 U.S.C. §112, second paragraph and is particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention. Consequently, Applicant respectfully submits that dependent claim 14 is allowable.

35 U.S.C. § 103 Rejections

Claims 10-11, 13 and 15 are rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over U.S. Patent 6,188,319 to Frucht in view of U.S. Patent 5,831,724 to Cordes.

In addition, claim 14 is rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over U.S. Patent 6,188,319 to Frucht in view of U.S. Patent 5,831,724 to Cordes and U.S. Patent 6,137,569 to Sasaki et al.

Furthermore, claim 12 is rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over U.S. Patent 6,188,319 to Frucht in view of U.S. Patent 5,831,724 to Cordes and U.S. Patent 4,681,433 to Aeschlimann.

To reject claims in an application under Section 103, the Examiner must establish a *prima facie* case of obviousness. Using the Supreme Court's guidelines enunciated in *Graham v. John Deere,* 383 U.S. 1, 17 (1966), one determines "obviousness" as follows:

> Under § 103, the scope and content of the prior art are to be determined; differences between the prior art and the claims at issue are to be ascertained; and the level of ordinary skill in the pertinent art resolved. Against this background, the obviousness or nonobviousness of the subject matter is determined.

In *KSR Int'l Co. v. Teleflex Inc.,* No. 04-1350 (U.S. April 30, 2007), the Supreme Court reaffirmed the *Graham* test, and indicated that although it should not be rigidly applied, a helpful insight into determining obviousness is to consider whether there is a teaching, suggestion or motivation in the prior art that would lead one of ordinary skill in the art to combine known elements of the prior art to arrive at the claimed invention. Importantly, the Court emphasized that a patent examiner's analysis under Section 103 should be made explicit in order to facilitate review.

Thus, to establish a *prima facie* case of obviousness, the Examiner has an obligation to construe the scope of the prior art, identify the differences between the claims and the prior art, and determine the level of skill in the pertinent art at the time of the invention. The Examiner must then provide an explicit, cogent reason based on the foregoing why it would be obvious to modify the prior art to arrive at the claimed invention. Applicant respectfully submits that the Examiner does not fulfill the obligation required to establish a *prima facie* case of obviousness.

However, to facilitate prosecution, Applicant has canceled claim 15 and submits that the new claim 16 is not obviated by the prior art cited. Applicant's silence with regard to the Examiner's rejections of the dependent claims 10-14 constitutes a recognition by the Applicant that the rejections are moot based on the Applicant's Remarks relative to the independent claim from which the dependent claims depend. Consequently, Applicant respectfully submits that independent claim 16 and dependent claims 10-14 are allowable. Applicant reserves the option to further prosecute the same or similar claims in the present or a subsequent Application.

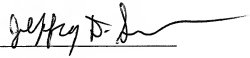
Conclusion

In view of the foregoing, the application is now believed to be in condition for formal allowance. Prompt and favorable action is respectfully requested.

Respectfully submitted,

BAKER BOTTS L.L.P.

Dated: July 25, 2008

By: 

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